

STATE OF NEW MEXICO
LEGISLATIVE EDUCATION STUDY COMMITTEE

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David Harrell, PhD, Deputy Director

MINUTES
LESC MEETING
AUGUST 17-19, 2009

Senator Cynthia Nava, Chair, called the Legislative Education Study Committee (LESC) meeting to order Monday, August 17, 2009, at 9:10 a.m., in the Multi-purpose Room of the Bob Moran Building, New Mexico Junior College, Hobbs, New Mexico.

The following LESC members were present:

Senators Cynthia Nava, Chair, Mary Jane M. García, Gay G. Kernan, and Lynda M. Lovejoy; and Representatives Rick Miera, Vice Chair, Jimmie C. Hall, Dennis J. Roch, Mimi Stewart, and Jack E. Thomas.

The following LESC advisory members were present:

Senators Vernon D. Asbill and Sander Rue; and Representatives Ray Begaye, Nathan P. Cote, Nora Espinoza, Mary Helen Garcia, Karen E. Giannini, John A. Heaton, and Shirley A. Tyler.

Also in attendance was Representative Donald E. Bratton.

Approval of Agenda

On a motion by Representative Stewart, seconded by Representative Hall, the committee unanimously approved the meeting agenda.

Welcome and Introductions

Following welcome remarks by the Honorable Gary Don Reagan, Mayor, City of Hobbs; Dr. Steve McCleery, President of the New Mexico Junior College; and Mr. Cliff Burch, Superintendent of Hobbs Municipal Schools, Senator Nava requested that committee members introduce themselves to the audience.

LAND GRANT PERMANENT FUND

Senator Nava recognized the Honorable Patrick M. Lyons, Commissioner of Public Lands, and Mr. Peter van Moorsel, LESC staff, for a discussion relating to the investment performance of the Land Grant Permanent Fund (LGPF), the fund's history, and the annual distributions to the fund's beneficiaries.

Mr. van Moorsel reported that, for the one-year period ending March 31, 2009, the fund experienced a net investment loss of approximately \$2.4 billion, or -23.8 percent; and he added that, during this time, contributions to the fund totaled \$561.1 million for the year, while distributions totaled \$508.6 million. For the first quarter of 2009, he stated that the LGPF returned -1.0 percent; and over the past five years, the LGPF experienced annual returns of 0.7 percent, or approximately \$221.6 million.

Regarding the annual distribution of money in the fund, Mr. van Moorsel explained that in 2003 voters approved a constitutional amendment to increase the annual distribution from the LGPF to the fund's beneficiaries from 4.7 percent to 5.0 percent of the five-year average of the fund's year-end market value. The amendment provided an additional 0.8 percent annual distribution from FY 05 to FY 12 and an additional 0.5 percent annual distribution from FY 13 to FY 16 to be used for education reform as provided by law. The amendment provided that any additional distributions not be made if the five-year average of the value of the fund is less than \$5.8 billion. He added that the Legislature, by a three-fifths' majority, can suspend these additional distributions, which revert to 5.0 percent in FY 17.

Mr. van Moorsel referred to two tables in the report, one illustrating the percentage ownership of the fund for all 20 beneficiaries based on FY 08 ownership, and the second showing the state investment council's estimates of projected total distributions to all beneficiaries of the fund, and to the public schools alone. He added that the second table was included in a similar report presented to the committee in June 2008; however, more growth was projected in the market value of the fund in 2008. He explained that investment losses in the last year have resulted in a decrease in the projected growth in both the LGPF and the distributions to the public schools.

Commissioner Lyons began his presentation by reporting the division of ownership of land in New Mexico, stating that 43 percent is privately owned, 34 percent is owned by the federal Bureau of Land Management, 10 percent is tribal land, 11 percent is held in trust by the state, and the state owns a further 2.0 percent.

Commissioner Lyons explained that, of the 22 trust beneficiaries, 21 were designated by Congress, and the State Parks Division was designated by the State Legislature in 1949. In FY 09, he added, the State Land Office received \$537 million in revenue, of which almost \$481 million went to the LGPF. According to Commissioner Lyons, the key sources of income to the LGPF are oil, gas and minerals (95 percent), renewable energy (0.5 percent), rights-of-way (1.0 percent), community and business development (1.0 percent), and agricultural leasing (2.5 percent).

Commissioner Lyons reported that FY 09 distributions from the LGPF, set by law at 5.8 percent of the five-year average market value for FY 05 to FY 12, totaled almost \$522 million. He added that the LGPF was currently valued at \$7.9 billion, and that the fund value had decreased

\$3.0 billion in one year. He added, however, that the fact that the distributions are based on a five-year rolling average ensured that the reduction in market value of the fund would not result in significantly reduced distributions from the fund, as the other four years' market values were at higher levels.

Committee Discussion:

In response to a committee member's question whether he would support increasing the distribution from the LGPF to fund education, the Commissioner stated that, regardless of the rate of distribution, accountability measures must be in place to ensure that the funds are expended in a prudent manner.

In response to a committee member's question about lease sales, Commissioner Lyons stated that lease sales are strong, indicating that oil and gas companies wish to continue doing business in New Mexico.

In response to a committee member's question regarding suspension of the distributions from the fund, Commissioner Lyons stated that the distribution would be suspended when the current value of the fund dropped below \$5.8 billion.

In response to a committee member's question about the timeline of starting up a uranium mine in the Mt. Taylor area, Commissioner Lyons responded that it takes approximately 10 years to acquire the necessary permits and begin operating such a mine. He added that, by 2035, such a mine could have earned \$500 million in revenue for the state.

FUNDING OF ENERGY-EFFICIENT PROJECTS IN PUBLIC SCHOOLS

Senator Nava recognized Ms. Sandra Ely, New Mexico Environment Department (NMED), for an overview of an existing initiative called Supplemental Environmental Projects (SEP). Ms. Ely explained that SEP projects involve entities that are fined for violating environmental regulations and that agree to contribute a portion of the fine to an environmentally beneficial project overseen by the NMED. In order to qualify to participate in an SEP, Ms. Ely continued, the violator must collaborate with the NMED to identify an appropriate avenue for restitution in the county where the initial environmental violation and resulting environmental damage occurred.

Environmental Protection Agency (EPA) protocols and procedures, Ms. Ely explained, are closely followed and enforced by the NMED, which has the authority to issue violations and assess fines. The NMED cannot statutorily require violators to participate in an SEP, but the reduction in the overall fine can be a major incentive, according to Ms. Ely.

Ms. Ely said that the NMED is now pursuing an initiative that would encourage violators to allocate portions of their fines to SEP projects in schools. These projects, Ms. Ely elaborated, could potentially be used for projects including air quality improvement measures, installation of renewable energy technology, and the installation of infrastructure that would reduce energy costs in schools.

Committee Discussion:

In response to a question from a committee member regarding the feasibility of implementing workforce training at community and junior colleges for “green energy” job skills, Ms. Ely stated that such an arrangement would be highly desirable.

In response to committee inquiry regarding the decision of the Public Service Company of New Mexico (PNM) to pay the full fine assessed for environmental violations rather than participate in an SEP, Ms. Ely declined to comment, noting that she was not part of those negotiations. She added, however, that PNM paid the full amount and in fact went beyond the stated code and regulations when addressing the violation.

In response to a committee member’s question relating to the authority of the NMED to oversee SEP agreements and to require violators to participate in the project, Ms. Ely stated that no statutory authority currently exists that would require violators to participate, but that the NMED would oversee public school implementation and expenditures in the event that SEP projects eventually do cooperate with and provide funding to schools. Ms. Ely also added that no tax benefits would be granted to violators who, in the event the program proceeds as planned, provide funding to public schools as part of the SEP agreement.

Finally, in response to several committee inquiries, Ms. Ely noted that several issues may hinder future development of the project, among them lack of statutory authority on the part of NMED to force violators to participate in the program or direct those choosing to participate to certain high-need projects. She noted that the amount of funding is highly variable, with allotments ranging from \$250,000 to \$1.0 million. Ms. Ely also clarified that any allotted funds go directly to the school districts, while NMED retains oversight.

DIRECTOR’S REPORT

a. Approval of LESC Minutes for May 2009

Upon a motion by Representative Hall, seconded by Representative Miera, the committee unanimously approved the LESC minutes for May 2009.

b. Approval of LESC Financial Report for May 2009

Upon a motion by Representative Stewart, seconded by Representative Miera, the committee unanimously approved the LESC Financial Report for May 2009.

c. Approval of LESC Operating Budget for FY 10

In presenting the LESC Operating Budget for FY 10, Ms. Frances Ramírez-Maestas, LESC Director, noted that the appropriation detail reflected a 2.5 percent reduction, or \$22,500. The reduction, she explained, consists of a 1.0 percent vacancy savings that was applied to all legislative agencies and a 1.5 percent decrease in the employer contribution rate for retirement that is included in 2009 legislation enacted into law. The provisions of this legislation, she

reported, require a 1.5 percent increase in the employee's contribution rate to provide for the employer's contribution rate for the period July 1, 2009 through June 30, 2011.

Upon a motion by Representative Stewart, seconded by Representative Miera, the committee unanimously approved the LESC Operating Budget for FY 10.

d. Correspondence and News Stories

Ms. Ramírez-Maestas reviewed several items of correspondence and news articles included in the committee members' notebooks, adding that these items are also included in the permanent file in the LESC Office.

PROPOSED PUBLIC SCHOOL FUNDING FORMULA REVENUE ISSUES

Senator Nava recognized Dr. Tom Clifford, Legislative Finance Committee (LFC) staff, and Mr. Peter van Moorsel, LESC staff. Mr. van Moorsel summarized a staff report concerning:

- the work and recommendations of the 2003 Blue Ribbon Tax Reform Commission;
- the tax credits and exemptions implemented since 2003; and
- the state revenue outlook for fiscal years 2010 through 2012.

Mr. van Moorsel explained that the Blue Ribbon Tax Reform Commission was created by legislation enacted in 2003. It was charged with developing recommendations for reform of New Mexico's tax laws to establish a balanced tax system that provides maximum economic development benefits while maintaining necessary government services at an appropriate level.

He added that the 23-member commission consisted of 10 members of the Legislature (five representatives and five senators) and 13 public members and that it focused on eight issues:

- tax relief for low- and middle-income families;
- gross receipts tax (GRT) of medical practitioners and hospitals;
- gross receipts tax on food;
- tax treatment of commercially active nonprofits;
- personal income tax rates and capital gains;
- state road fund sources;
- liquor and other excise taxes; and
- corporate income taxes.

The commission formally developed 196 separate proposals to alter the tax system. Of these, the commission adopted 71, including:

- expanding and enriching the low-income comprehensive tax rebate table and adding an income tax personal exemption of up to \$3,000 for families below the median income level for their filing status;
- a new GRT deduction for health practitioners for receipts from managed health care contracts and Part C Medicare payments;

- expanding from 50 percent to 100 percent the GRT deduction for for-profit hospitals to treat virtually all hospitals the same;
- capping the state capital gains deduction to restore some progressivity to the income tax;
- reducing the highest corporate income tax rate to 6.4 percent from 7.6 percent, compressing the three-step tax table to two steps, and requiring corporations to file on a combined unitary basis; and
- increasing the gasoline and special fuel (diesel) tax rates, vehicle registration fees, and other fees to increase funding for state and local road funds.

The commission made no recommendations in the areas of:

- gross receipts tax on food – the commission believed that expanding the low-income comprehensive tax rebate table and establishing a new personal exemption were preferable to reducing or eliminating the GRT on receipts from selling groceries, and therefore did not recommend a GRT deduction on food sales;
- personal income tax rates – although the commission studied delaying or eliminating the later phases of the income tax rate cut enacted earlier in 2003 and considered whether to restructure those phased-in cuts, it decided not to make a recommendation on this issue;
- gross receipts tax exemption for nonprofit organizations – other than recommending a change in reporting for larger organizations, the commission decided it did not have the information to separate nonprofits thought to be competing with for-profit businesses from those engaging in strictly charitable activities; and
- liquor excise tax – the commission agreed that this is a critical issue for the people of New Mexico but did not deem it appropriate for this commission; rather the commission felt the full Legislature and the Governor should address it.

Dr. Clifford discussed the tax credits and exemptions that have been implemented since 2003, including:

- family tax relief initiatives, such as the Working Families Tax Credit, the low-income personal exemption, and the GRT deduction for food sales;
- medical services initiatives, such as a deduction for medical services reimbursed by managed care organizations; an income tax credit for rural health practitioners; a GRT credit for unreimbursed care; a GRT deduction for hospital construction; and a GRT credit for hospital operations;
- economic development initiatives, including a high-wage jobs tax credit; the Film Production Tax Credit; the Research and Development Small Business Tax Credit; and tax increment financing for development districts; and
- renewable energy initiatives, including renewable energy production tax credits; and sustainable building tax credits.

Dr. Clifford next discussed the revenue outlook for FY 10 to FY 12. He reported that FY 09 recurring revenue fell \$309 million short of what was forecast and that, after considering fund transfers from the Medicaid Federal Medical Assistance Percentage (FMAP) fund, the FY 09 revenue shortfall is \$133 million. He stated that the FY 10 revenue shortfall is an additional \$433 million, and that FY 10 recurring revenue is down approximately \$1.0 billion over the

FY 09 revenue before the solvency initiatives that were taken during the 2009 session. As FY 10 begins, he added, reserves are at 8.4 percent of FY 10 recurring appropriations.

Dr. Clifford stated that, although revenue growth will turn positive in FY 11, revenues are not projected to reach FY 08 levels until after FY 14. He added that revenue growth would be around 3.0 percent after FY 12.

Dr. Clifford concluded that mixed economic data indicated that the economy is near the bottom of the downturn and that recovery is imminent. However, he cautioned that the speed of the recovery would be difficult to predict.

Committee Discussion:

In response to a committee member's question whether any of the tax exemptions that Dr. Clifford had discussed had sunset provisions, Dr. Clifford responded that most renewable energy exemptions had sunset clauses, and he added that some exemptions had already been renewed.

In response to a committee member's question regarding the portion of state revenues that come from the GRT, Dr. Clifford stated that this tax generated approximately one-third of state revenue.

In response to a committee member's question why corporate income tax revenues had declined, Dr. Clifford responded that this tax is a net income tax and that the reduction in the revenues matched a nationwide trend caused by the recession.

In response to a committee member's question whether it was possible that the revenue projections could be too low and that revenues might actually be higher than predicted, Dr. Clifford said that, due to the unpredictable economic environment, recent revenue forecasts have seen larger errors. He also stated the importance of reserves in such an unpredictable economic climate.

SCHOOL CALENDARS

Senator Nava recognized Mr. David G. Peña, LESC staff, for a report on issues associated with the implementation of legislation enacted in 2009 that, effective school year 2010-2011, will require that a school year consist of 180 full instructional days for a regular school year calendar and 150 full instructional days for a variable school year, excluding release time for in-service training.

Mr. Peña explained that, during the June 2009 LESC interim meeting, several committee members expressed concern that school districts and charter schools were reporting that, despite the effective date of this legislation, Public Education Department (PED) staff during the budget approval process for school year 2009-2010 were requesting the implementation of the required instructional days a year earlier. In response to these concerns, Mr. Peña noted, LESC staff contacted three school districts: Tucumcari Public Schools, Hobbs Municipal Schools, and Albuquerque Public Schools. According to Tucumcari school personnel, he stated, PED staff

encouraged the district to move to 150 instructional days in school year 2009-2010 and allowed the district to convert a professional day to an instructional day. Because the school district had 149 instructional days in school year 2008-2009, he added, the district staff reported that the conversion to 150 instructional days was feasible. For Hobbs Municipal Schools, Mr. Peña added, school personnel reported that additional instructional days were alluded to during discussions with PED budget staff. Albuquerque Public Schools staff, on the other hand, stated that instructional day requirements were not discussed with PED staff during the budget approval process.

Mr. Peña then referred the committee to a spreadsheet prepared by LESC staff for the committee's review. This spreadsheet, he explained, allows the committee to compare the number of instructional days approved during the budget process for school year 2009-2010 to those approved for the school year 2008-2009. Finally, he noted that the October interim meeting of the committee included a review of the 2009-2010 school budgets approved by PED, at which time additional committee concerns regarding this issue could be discussed with PED staff.

Committee Discussion:

In response to a committee member's question why a school district would move to a four-day week, Secretary of Public Education Veronica C. García stated that the provisions in current law under the *Variable School Calendar Act* provide school districts and charter schools an opportunity to modify their school calendar in any school year in order to achieve optimum and maximum use of school facilities and personnel.

There being no other business, Senator Nava, with the consensus of the committee, recessed the LESC meeting at 4:50 p.m.

MINUTES LESC MEETING Tuesday, August 18, 1009

Senator Cynthia Nava, Chair, called the LESC meeting to order Tuesday, August 18, 2009, at 9:22 a.m., in the Multi-purpose Room of the Bob Moran Building, New Mexico Junior College, Hobbs, New Mexico.

The following LESC members were present:

Senators Cynthia Nava, Chair, Mary Jane M. García, Gay G. Kernan, and Lynda M. Lovejoy; and Representatives Rick Miera, Vice Chair, Jimmie C. Hall, Dennis J. Roch, Mimi Stewart, and Jack E. Thomas.

The following LESC advisory members were present:

Senators Vernon D. Asbill, and Sander Rue; and Representatives Ray Begaye, Nathan P. Cote, Nora Espinoza, Mary Helen Garcia, Karen E. Giannini, John A. Heaton, and Shirley A. Tyler.

COHORT GRADUATION RATE REPORT

Senator Nava recognized Ms. Pamela Herman, LESC staff, for a report on the release by the Public Education Department (PED) of cohort graduation rate data for the New Mexico high school class of 2008. Ms. Herman acknowledged individuals in the audience who were available to respond to committee questions, including Dr. Veronica C. García, Secretary of Public Education; Dr. Catherine Cross Maple, Deputy Secretary for Learning and Accountability, PED; and Dr. Tom Dauphinee, Interim Supervisor, Assessment and Accountability Division, PED; Mr. Dwain L. Haynes, Superintendent, Eunice Public Schools; Mr. Cliff Burch, Superintendent, Hobbs Municipal Schools; Mr. Michael Phipps, Superintendent, Artesia Public Schools; Dr. Sheri Williams, Superintendent, Carlsbad Municipal Schools; and Ms. Rose-Ann McKernan, Executive Director, Student Information Systems, Albuquerque Public Schools (APS).

Directing the committee's attention to the staff report and its attachments in members' notebooks, Ms. Herman began with an explanation of the state's new method of calculating graduation rates, the adjusted cohort method. She said that, when New Mexico signed the National Governors Association (NGA) 2005 Graduation Counts Compact, the state agreed with the other 49 states to use a uniform formula to compute graduation rates. New Mexico amended its federal Accountability Workbook to use the NGA method starting with students entering 9th grade in 2004, in place of the former "event rate," which measured the percentage of 12th graders present on the 40th school day who graduated at the end of that school year. The change was made possible, she noted, because legislation enacted in 2004 required PED to assign a unique identification number to every student for longitudinal tracking and because the Legislature had appropriated a total of \$14.7 million to PED since 2006 to build the Student Teacher Accountability Reporting System (STARS) data warehouse.

Ms. Herman showed the committee the NGA adjusted cohort graduation rate formula:

$$\text{Where Year X is the 9}^{\text{th}} \text{ grade year, the adjusted cohort graduation rate} = \frac{\text{On-time graduates in Year X+4 (numerator)}}{\text{First-time 9}^{\text{th}} \text{ graders in Year X} + \text{Transfers In} - \text{Transfers Out (denominator)}}$$

Ms. Herman then directed the committee's attention to the *PED Graduation Rate Technical Manual*, attached to the staff report, which detailed how to calculate the rate. It stated that, to be included in the cohort, students had to be present as 9th graders on any two count dates in school year 2004-2005 and not present in the previous 9th grade class. Students were counted as "transfers in" if they were first-time 10th graders in school year 2005-2006 or 11th graders in school year 2006-2007. Students who were excluded included new 12th graders in school year 2007-2008; deceased students, émigrés and deportees; foreign exchange students; those who transferred out to a non-PED school; students who had left school for a list of reasons essentially beyond their control; and those who met criteria for a subsequent cohort because they had ever been classified as English language learners (ELL) or had an individualized education program (IEP) that provided for more than four years to graduate.

Ms. Herman explained that the graduation data showed students in terms of decimals because PED used a "shared accountability" method to apportion student outcomes among all the schools with grades 9-12 that those students had attended. Based on information in the data system, PED

determined what proportion of a student's high school career was spent at each school, and each school received a corresponding share of responsibility for whether that student graduated.

Moving into the substance of the data, Ms. Herman said that, according to PED, approximately 54 percent of the class of 2008 graduated on time. Of 29,952 students counted in the cohort, PED data showed that 16,173 graduated within four years (by August 2008), and 13,781 did not graduate and were not excluded for one of the accepted reasons. She said that, in comparison, the National Center for Education Statistics reported a national *estimated* average freshman graduation rate for school year 2005-2006 of approximately 73 percent. She also noted that, according to the NGA, of 12 states using the NGA rate that had reported 2008 data by late July 2009, rates ranged from 68.2 percent in Arkansas to 86.9 percent in North Dakota.

According to Ms. Herman, the PED report included data for the whole state, school districts, and any school with grades 9-12, and it showed graduation rates for all students and disaggregated for subgroups as follows:

Subgroup	# of Students	2008 Graduation Rate
Asian	362.9	67.4%
Caucasian	9,125	64.1%
Low-income	11,555	60.5%
Female	14,517	58.6%
English language learners	9,838	55.6%
All students	29,952	54.0%
African-American	730	52.0%
Hispanic	15,492	50.2%
Male	15,435	49.7%
Students with disabilities	6,699	46.8%
American Indian	4,240	45.4%

Ms. Herman pointed out that the PED data could be analyzed to see which districts or schools, based on size or other characteristics, were doing best at producing graduates for all students or particular subgroups, and she noted that the publication of the first cohort graduation data was an example of the potential value of STARS as a tool for identifying successes and best practices.

Ms. Herman also noted that PED had provided schools and districts an appeal period, through August 21, 2009, for the information in the cohort graduation rate report to be corrected.

Turning to the implications of the PED data, Ms. Herman observed that, under the federal *No Child Left Behind Act of 2001* (NCLB) and the state *Assessment and Accountability Act*, graduation rates were the "other academic indicator," besides standards-based tests, that determined if high schools made adequate yearly progress (AYP). She said that PED had proposed a target of 52 percent for the class of 2008 to the US Department of Education (USDE), rising in annual increments to 90 percent for the class of 2020. She noted that, under NCLB, only the "all students" group would count for AYP through the class of 2010, after which, for a school to make AYP, every subgroup must meet the state's graduation rate target.

Ms. Herman indicated that a new USDE regulation was published in October 2008 that will require all states to use a uniform calculation of graduation rates for AYP determinations beginning with the class of 2011. The USDE methodology is similar, but not identical, to the

NGA formula; it differs in that it will bar states from counting students with disabilities and English language learners as graduating “on time” if they take more than four years to do so. However, she said that, while the regulation defines on-time graduation to mean within four years of starting 9th grade, the USDE will allow states to propose an “extended-year graduation rate,” reported separately from the standard four-year rate and applicable to a limited number of students who under certain conditions may take longer than four years to graduate. Ms. Herman also pointed out that a state law enacted in 2009 provided that a student who satisfies the requirements for graduation within five years of entering 9th grade, including the final summer, may be counted as a graduate in the year all the requirements are satisfied. She said that PED plans to report both four- and five-year rates starting in 2010 for the class of 2009.

Ms. Herman identified some groups of students who do not graduate on time, each of which had particular needs. She said that PED had estimated that as many as 3,000 students may stay in high school after four years, recovering credits or pursuant to an IEP; an unknown number of students complete their required coursework but have not passed the graduation test; there are school-age students pursuing a general educational development (GED) certificate; and some may have left high school early to enroll in postsecondary education.

To address poor graduation rates, Ms. Herman pointed out the benefit of knowing how cohorts progress through high school. For example, she cited PED data presented to the LESC in 2007, indicating that only 177 students were retained in 8th grade for school year 2005-2006, as the law requires for students who are not proficient, while 4,940 students that year were retained in 9th grade because they lacked the credits to be promoted. She said that understanding patterns of retention, graduation, and dropping out can help school leaders develop appropriate interventions, and she cited some approaches whose efficacy had support in the literature:

- identifying retention and risk factors most pertinent to a specific school or district;
- building an early warning system than can diagnose which students are struggling and why;
- holding schools and districts accountable by making retention and graduation central to their missions;
- addressing instructional needs of incoming high school students most at risk in reading and math;
- personalizing the learning environment;
- building capacity, including teacher quality, in low-performing schools; and
- creating connections to the community, employers, and higher education to improve opportunities for real world learning.

As a policy option, Ms. Herman suggested that the committee might wish to consider sponsoring legislation to require that, when PED publishes cohort graduation data, the department also provide information about how many students:

- are known to have dropped out;
- have earned or are attempting a GED;
- are known to still be in high school;
- have all the credits required for graduation but still have not passed the graduation test; and
- are progressing from 9th grade onward.

Such data, she said, would allow a better understanding of the patterns of retention, graduation, and dropping out among New Mexico high school students.

Senator Nava next recognized Dr. García, who prefaced her remarks to the committee by emphasizing that, as important as it is for students to graduate, it is at least as important that they graduate with the skills and knowledge they need for success. She noted that there are some schools with high graduation rates but low rates of proficiency on the state standards-based assessments. She said that, with more statistical staff, PED could provide more data. In particular, Dr. García expressed concern about the “lost years” in middle school, where, despite legislation to make proficiency a criterion for advancing to high school, not many students were being held back. Dr. García said that at meetings of the Council of Chief State School Officers (CCSSO) she had learned that USDE may decide to allow five-year graduation rates to count across the board for AYP. She noted that, until that is the case, school districts have no real incentive to reach out to those potential fifth-year graduates.

Senator Nava recognized Dr. Cross Maple, who noted that the department planned to take advantage of the USDE provision to seek approval for an extended-year graduation rate for students with IEPs and for ELLs. She also explained that the department’s “shared accountability” method was developed as a way to account for students who enter and leave multiple high schools.

Committee Discussion:

In response to a committee member’s question how ELLs could be said to be excluded although their graduation rates were actually reported, Dr. Cross Maple stated that the ELLs that districts were able to exclude from the cohort were only those who had newly entered the state’s school system as ELL students during or after 9th grade. She noted that the state is anticipating additional clarification from the USDE regarding its non-regulatory guidance on this subject and that PED would work with USDE to determine which students could be excluded.

In connection with the discussion of the ELL subgroup, Dr. Cross Maple noted that, beginning in 2012 when graduation rate data must be disaggregated for all subgroups, there would be as many as nine new ways for schools to fail to make AYP.

In response to a committee member’s question regarding categories of students who had better success in graduating than expected, Dr. García pointed to the better-than-average graduation rate of low-income students, and she credited programs such as school breakfasts and academic supports funded with federal money that target those students. Dr. García said that the new initiative “Graduate New Mexico-It’s Everybody’s Business,” through partnerships with faith-based communities, nonprofit organizations, businesses, and state resources like Innovative Digital Education and Learning (IDEAL-NM), and local school districts, would be geared to target school district efforts such as night and early morning classes that could reengage dropouts to return and earn their missing credits. She noted that the Governor was allocating funds from the federal stimulus for community outreach on this initiative, regardless of whether it helped raise the four-year graduation rate. She noted that the PED website would have a place to post communities’ best practices that could be replicated to increase the number of graduates.

Representative Miera commended the department for not shying away from making the graduation rate data public so that schools and others had the information they needed to help students. He noted the effort of the P-20 Data Council to develop a data system linking public schools with postsecondary institutions to help education leaders understand where students were and how they were progressing through the pipeline.

In response to a committee member's question whether the PED-reported graduation data were accurate, Ms. Herman observed that districts had until August 21, 2009 to correct data and file appeals. Dr. García stated that PED had already made many corrections and that data accuracy varied depending on the care exercised by school registrars. She added that, as the state continues to use STARS, the quality of its data would continue to improve. In response to a committee member's question why the data were released before the appeal date, Dr. García said it had been difficult to compile all the data earlier, and that the state faced an August 3 deadline for reporting state AYP results.

In response to a committee member's question why school districts were not looking at 6th grade test scores to identify students who needed targeted intervention in middle school, Dr. García indicated that the power to do so was emerging through improved data systems, the implementation of the Response to Intervention process, and existence of web-based tools to single out specific approaches that could work for specific students. She said that each principal already had data tools to analyze classroom test scores and isolate topics that were challenging teachers and students, to help develop intervention strategies.

In response to a committee member's question about the use of funds from the federal Race to the Top grant competition, Dr. García stated that she had delegated to Dr. Cross Maple the job of pulling together the state's proposal, probably in the second round of the competition, pending the release of the final request for proposals from USDE. She said she was concerned that the state law that limited student enrollment in charter schools in small districts might need a second look, since a proposed eligibility provision in the Race to the Top criteria prohibits enrollment caps in state charter schools laws.

In response to a committee member's question regarding what PED intended to do when it saw a large discrepancy between graduation rates and proficiency rates on standards-based assessments at particular schools, Dr. García said that, although PED was short of staff, the Priority Schools Bureau would address those discrepancies by helping schools in the school improvement cycle to set proficiency targets in their Educational Plans for Student Success (EPSS). She said that PED had new web-based tools that would give school teachers access to appropriate lesson plans and other tools for specific curricular topics where their students needed help.

In response to a committee member's question whether the data for certain school districts with freshman academies bore out the efficacy of those programs, Ms. Herman said that, although that analysis had not been done, with the data in hand that kind of analysis would be possible for all types of interventions.

In response to a committee member's question whether public university faculty could help PED where it faced a shortage of staff with statistical expertise, Senator Nava noted that she hoped the committee could look into supporting a project in New Mexico modeled after the Chicago

Consortium, a group of universities cooperating to do research needed by the Chicago Public Schools.

In response to a committee member's concern that there were some in the Legislature advocating for the abolition of 12th grade, Dr. García noted that, with the more rigorous high school graduation requirements enacted in 2007 now in effect for students starting high school in fall 2009, senior year coursework would become more demanding.

In response to a committee member's question how to engage students who are not challenged in high school, Dr. García stated that there were some students who probably ought to be able to "test out" or advance into higher education after showing they could succeed there, without being counted against the high school's graduation rate.

In response to a committee member's concern that adding more Algebra-related high school graduation requirements would compound New Mexico's high school graduation problems, Dr. García noted that the core national standards project had developed proposed math standards that focused on some key Algebra II concepts but not necessarily the entirety of Algebra II. She said that there was still a national dialogue underway regarding what math standards should be required for all students and that New Mexico could reconsider its math standards after the proposed national standards were promulgated.

In response to a committee member's question about how burdensome the data-gathering required for reporting graduation rates was for school districts, Dr. Dauphinee indicated that districts reported the data through STARS and that they had been struggling earnestly to gear up for the last year or two to do so.

In response to a committee member's question whether dropouts could be recaptured and counted as five-year graduates, Dr. Cross Maple explained that, if they come back to high school and complete the requirements for graduation any time before August of the year after they were originally supposed to graduate, they would be counted as five-year graduates.

In response to a committee member's question about the fairness of computing graduation rates for alternative high schools and the charter schools that catered to students with special challenges, Dr. García noted that, if it were designated as a program rather than a school, it should not have a separately calculated graduation rate.

In response to a committee member's question about how the state could prepare for the impact of the 11th grade standards-based assessment being used as a graduation test, Dr. García said that, apart from programming the additional Title I and *Individuals with Disabilities Education Improvement Act* (IDEA) funds made available through the federal stimulus, she did not see a large amount of new resources available for interventions. She noted that if the state were awarded Race to the Top funds, depending on what its proposal contained, some of that funding might be available for that purpose.

A committee member urged PED and the committee to engage institutions of higher education in discussions about the quality of public education and how to improve it.

Chairman Nava recognized Ms. McKernan, who provided committee members with copies of the APS cohort graduation rate report for the class of 2008. She commended the committee and PED for efforts to develop the statewide data system and cohort graduation rate, which provided much more realistic data for educators to use. She noted that APS had produced its own cohort graduation rate report for about 20 years in order to see long term trends, but that APS used a different method, a “true cohort” calculation that did not look at students who transfer in or out; instead, the district tracked the cohort of entering 9th graders through to their senior year to see how many graduated on time. APS counted students in five categories at the end of four years: graduates; those still in school; dropouts; GED recipients; and deceased or expelled students. She said that APS looked forward to working closely with PED to develop useful graduation rate data, and she noted that what was most helpful to the district from STARS data was the ability to track students who transferred outside APS. Ms. McKernan stated that it was important to focus on engaging and re-engaging all students, whether or not they would contribute to an on-time graduation rate. She said that, otherwise, a large group would be “no one’s students” once they no longer counted toward any school’s graduation rate.

In response to a question from a committee member regarding the continuity of educational programs for students in the Juvenile Detention Center, Mr. Joseph Escobedo, Government Affairs Liaison, APS, stated that, in the case of students who were incarcerated for a short time and continued their education while they were there, the Superintendent of APS had signed a letter of agreement ensuring that their coursework would be accepted when they returned to their regular high schools. Mr. Escobedo said APS was distributing the letter to all of its high school principals. The committee member stated that students at all 14 juvenile detention facilities in the state should be treated the same way by their home high schools.

In response to a question from a committee member regarding whether APS would continue to calculate a four- or five-year graduation rate using its “true cohort” methodology, Ms. McKernan stated that leadership at APS was debating whether to keep its graduation rate report an internal document in the future and use the state’s data for public purposes, to avoid the confusion of having two different graduation rates reported.

A committee member pointed out the increase in the number of students in APS who were still enrolled for a fifth year, from approximately 8.4 percent in 2003 to 21.9 percent in 2008, compared with just the 17.8 percent from all comprehensive high schools in Albuquerque who were counted as dropouts. This committee member stated that the low reported graduation rate was misleading compared to the number of students who were still trying to graduate. Ms. McKernan agreed that many members of the community believed that the dropout rate was the inverse of the graduation rate, when in fact there were many places a student could be after four years, including still in school.

Senator Nava recognized Mr. Phipps, who told the committee that he believed that the high school activity program in Artesia, which had an 87 percent graduation rate, was an important factor in keeping students engaged and in school. He cited an occasion when school budget problems in the 1980s resulted in the elimination of extra-curricular activities in middle schools, resulting in an increase in truancy, dropouts, and neighborhood crime. In response to concerns expressed by committee members representing sparsely settled regions with a high proportion of Native American students, Mr. Phipps acknowledged the difficulty of engaging students and families in those very rural areas. He told the committee that the passage of a new public school

funding formula would help address some of those needs. Mr. Phipps indicated that getting students involved in activities took community awareness, business sponsors, working with parents, and a range of involvement strategies.

HIGH SCHOOL REDESIGN: IMPLEMENTATION OF PROVISIONS IN LAW

Senator Nava recognized Ms. Eilani Gerstner, LESC staff, for a report on the implementation of LESC-endorsed high school redesign measures enacted in 2007. Before beginning her report, Ms. Gerstner acknowledged individuals from the Public Education Department (PED) who were present to address committee questions, including Dr. Catherine Cross Maple, Deputy Secretary for Accountability and Learning; Dr. Anya Dozier Enos, High School Redesign Coordinator; and Ms. Ruth Williams, Legislative Liaison.

Ms. Gerstner began by explaining that the 2007 high school redesign measures were intended to “[provide] students with a rigorous and relevant high school curriculum that prepares them to succeed in college and the workplace.” These measures, she added, could be classified into the following categories:

- increased graduation requirements;
- required course offerings;
- changes to assessment and testing;
- additional minimum instructional areas; and
- changes to compulsory school attendance provisions.

Although not part of the high school redesign legislation, she said, other measures enacted in 2007 that were also designed to increase rigor and prepare students for college and career require that:

- schools offer financial literacy for elective credit; and
- school districts align mathematics, science, and language arts curricula and teacher professional development with state standards.

Ms. Gerstner noted that, while the LESC has heard separate reports in the 2007 and 2008 interims covering the implementation of some high school redesign measures, the committee had not yet received a comprehensive overview of the implementation of all high school redesign requirements.

Next, Ms. Gerstner provided an overview of the staff report, which presents information in two formats: the narrative explanation, which provides additional information and identifies potential issues; and Table 1, *High School Redesign: Implementation of Provisions in Law*, attached at the end of the narrative, which provides concise, categorized data. Ms. Gerstner noted that, although funding has not been appropriated specifically for “high school redesign” as a statewide initiative¹, various initiatives that fall under the umbrella of high school redesign

¹ However, from 2007 to 2008 Los Lunas Public Schools received \$500,000 in special appropriations for the college readiness and high school redesign initiative in that district.

have received direct legislative appropriations since 2007. Those dollars, she said, are noted in column B of Table 1.

Ms. Gerstner then explained the new graduation requirements. Effective school year 2009-2010, she said, students entering grade 9 are required to take 24 units to graduate (rather than 23) to earn the Diploma of Excellence. Certain other new graduation requirements, she added, may present issues in terms of resources needed to implement them:

- requirement: four units in mathematics (rather than three), one of which shall be the equivalent to Algebra II or higher, unless the parent submits written, signed permission for the student to complete a lesser mathematics unit; and
issue: PED estimates that nearly 99 additional teachers will be needed for all students to fulfill this requirement.
- requirement: three units in science, two of which shall have a laboratory component (rather than one laboratory component); and
issue: PED reports that high schools have requested approximately \$7.5 million in science laboratory improvements, equipment, and supplies to meet this requirement.

Ms. Gerstner explained that, to determine the extent to which students were already meeting the Diploma of Excellence requirements—and to demonstrate the “ground” left to cover in their implementation—LESC staff requested from PED the percentage of students who graduated in school year 2008-2009 and who met the upcoming graduation requirements, which can be found in column F in Table 1. However, she said the actual number of students meeting graduation requirements cannot be tracked at the state level because grades are not consistently reported into the Student Teacher Accountability Reporting System (STARS). The system does track course enrollment, but not course completion.

Next Ms. Gerstner described required course offerings mandated by high school redesign, also summarized in column A of Table 1, and she noted an issue with regard to tracking their implementation:

- effective June 15, 2007, schools must offer financial literacy for elective credit for graduation;
- effective school year 2008-2009 schools or school districts must offer:
 - Algebra I to all 8th graders whether in regular classroom settings, online courses, or agreements with high schools;
 - dual credit courses;
 - distance learning courses; and
- effective school year 2009-2010, high schools must offer at least two years of a language other than English.

However, Ms. Gerstner added, PED reports that because STARS tracks student enrollment in courses rather than course offerings, it is not yet possible to track whether schools are offering these courses.

Ms. Gerstner then gave brief summaries of requirements related to curricula and professional development alignment, minimum instructional areas, and compulsory school attendance, highlighting certain issues that arose:

- Even though school districts must align curricula to state standards by school year 2009-2010 for language arts, PED reports that the alignment has been delayed until March 2011 due to the adoption of new language arts K-12 standards and the extension of the publisher's contract for instructional materials.
- Even though the high school redesign legislation changed from 17 to 18 the age at which students could leave school with permission, current PED rule does not address the age at which students may leave school with permission or the terms of the permission. PED reports that a proposed amendment to the compulsory attendance rule addresses this provision. It is also not clear whether PED distributed information to districts about this change in statute.

Finally, Ms. Gerstner provided an overview of changes to graduation requirements and required course offerings in past years that became effective by or before school year 2008-2009. She said several issues arose with regard to tracking the implementation of these requirements:

- **Service learning:** Even though service learning has been a required course offering for elective credit for graduation since June 20, 2003, PED reports that, because service learning courses have been coded as "general electives" in STARS in past years, it is not possible to measure the number of students who have taken it. Also, as with other required offerings, PED reports that STARS does not collect data on course offerings, only course enrollments; however, beginning with school year 2009-2010, service learning will have an assigned course code in STARS, allowing the course enrollment to be tracked.
- **New Mexico History:** Effective school year 2005-2006, students entering grade 9 were required to take one-half unit in New Mexico history to graduate. However, according to PED data, as many as 44 percent of students who graduated in school year 2008-2009 and were subject to the New Mexico history requirement did not take the course or another comparable course. In reference to the New Mexico history requirement, Ms. Gerstner said, PED has replied that "[i]t is the school districts' responsibility to follow legislation for Graduation Requirements."
- **Honors courses:** Effective school year 2006-2007, schools were required to offer honors courses. However, PED rule does not contain a requirement that schools offer honors courses. Also, in the department response to LESC staff requests, PED did not provide examples of information disseminated to districts to inform them of this requirement. As with other requirements, because STARS does not collect course offerings, it is not possible to measure the extent to which this requirement has been implemented statewide.

Ms. Gerstner summarized several bills introduced in the 2009 session to amend or add graduation requirements in law, and she noted that, according to PED, each additional required course offering may cost \$501.30 per student², or \$15,039 per class of 30 students. If the courses

² Based upon the 2008-2009 unit value of \$3,871.79 per student, the average textbook cost of \$104., and the assumptions that taking an elective for a year represents 1/8 of a student's course load and that textbooks are purchased every six years.

were available via Innovative Digital Education and Learning-New Mexico (IDEAL-NM), the cost would be \$200 per student, with no textbook; however, districts would still need to pay for computer access and any other costs associated with offering online courses.

Finally, Ms. Gerstner said, in light of issues raised in the report with regard to data collection in particular, the committee may wish to write a letter to PED requesting that the department implement changes in STARS to:

1. collect verification from districts that students completed graduation requirements as specified in law;
2. document that schools offered courses that are required in law, including Algebra I for 8th graders and service learning and financial literacy for elective credit;
3. document which schools offer media literacy and pre-apprenticeship for elective credit; and
4. document whether students successfully complete courses.

Committee Discussion:

In response to a committee member's question regarding how schools might document that they are offering courses as required in law and how they could satisfy the requirement to offer a course, Ms. Gerstner replied that districts could report verification through STARS. Dr. Cross Maple indicated that schools could demonstrate that they offer a course in a variety of ways, including offering it through IDEAL-NM and through dual credit. She said the web-based Educational Plan for Student Success (EPSS) tool under development could also be used to demonstrate that required courses are being offered.

Several committee members raised concerns regarding the fact that, according to PED data, 44 percent of students who graduated in school year 2008-2009 and were subject to the New Mexico history requirement did not take the course or another comparable course. Dr. Cross Maple replied that school districts may not have reported the data accurately into STARS and that once they become aware that the information is publicized they will become more vigilant about documenting that students have completed the requirement.

A committee member also voiced concerns about PED's response that, with regard to the New Mexico history graduation requirement, "[i]t is the school districts' responsibility to follow legislation for Graduation Requirements." Dr. Cross Maple replied that the response alluded to the local autonomy and responsibilities of school districts and was not meant to convey a "lassiez-faire" attitude from PED. Several committee members expressed concern about the capability of PED and school districts to comply with increasing accountability requirements.

Referring to the cost of \$15,039 per class of 30 students estimated by PED to offer a course a committee member asked if some of the high school redesign requirements were unfunded mandates. Ms. Gerstner indicated that, although no appropriations have been made specifically for high school redesign implementation statewide, schools may have already begun incurring these costs as they offer additional required courses.

In response to a committee member's question about what courses would qualify for a "lesser" mathematics course if a student opted out of Algebra II, Dr. Cross Maple replied that PED would have a rule forthcoming to provide guidance for districts.

In response to a committee member's question regarding how the state could produce 99 additional math teachers, Ms. Gerstner noted that some need may be met with IDEAL-NM, and Dr. Cross Maple replied that PED has contracted with "teachersteachers.com" to help improve teacher recruitment.

In response to a committee member's question whether the New Mexico Lottery Scholarship pays for students to take remedial courses, Ms. Ally Hudson, P-20 Policy Analyst, Higher Education Department, replied that the scholarship does cover remedial courses; however, students who take remedial courses often exceed the eight semesters covered by the scholarship before they earn enough credits to graduate.

LEGISLATIVE FINANCE COMMITTEE (LFC) PROGRAM EVALUATION: ACHIEVEMENT GAP AND THE THREE-TIERED SYSTEM

Senator Nava recognized Mr. Craig Johnson, Program Evaluator, Legislative Finance Committee (LFC), to discuss the results of the LFC evaluation of the achievement gap and the three-tiered licensure system. Mr. Johnson was accompanied by three other LFC staff members: Mr. Manu Patel, Deputy Director for Program Evaluation; Mr. Charles Sallee, Program Evaluation Manager; and Mr. David Craig, Program Evaluator.

Mr. Johnson began his presentation by thanking a number of people who had provided assistance or guidance during the evaluation: Dr. Veronica C. García, Secretary of Public Education; Dr. David Harrell, Deputy Director, LESC; staff members from the Public Education Department (PED) and the Office of Education Accountability (OEA); and the approximately 500 educators who responded to LFC surveys.

After a brief account of the history of the three-tiered system as enacted in 2003, Mr. Johnson described the LFC's methodology in data collection and analysis. The evaluation cross-referenced the licensure level of 2,336 teachers from almost every elementary school in the state with the New Mexico Standards-based Assessment scores of 40,199 of these teachers' 4th, 5th, and 6th grade students from one test administration to another in order to generate data regarding licensure level as it relates to student standards-based assessment growth and the achievement gap. In doing so, the evaluation considered not only licensure levels 1, 2, and 3 but also whether levels 2 and 3 had been earned through the professional development dossier (PDD) process or before that process was required.

The New Mexico Standards-based Assessment, Mr. Johnson explained, uses a scale-score mode of tabulation, which is vertically equated, enabling student growth analysis from year to year. Mr. Johnson also said that his visits with school principals confirmed for him the legitimacy of using standards-based assessment data to identify high-performing teachers.

Mr. Johnson then presented some of the key findings of the evaluation:

- In general, teachers who passed their Level 3 PDD outperformed every other group. These teachers were the only group of teachers to produce proficiency gains in both math and reading; however, their classes contained more of the students who were likely to achieve these gains (that is, non-economically disadvantaged students).
- Some teachers in all licensure groups increased their students' scores; however, the differences in student achievement between licensure levels were generally not statistically significant.
- While Level 3 teachers performed the best at increasing scores, no group of teachers was able to increase scores in the majority of students.
- There are effective and ineffective teachers at all licensure levels, and the greatest difference in teacher effectiveness is *within* each licensure level, not *across* levels. On this point, Mr. Johnson added that New Mexico needs to have a candid discussion about what constitutes "teacher effectiveness" and how it can be appropriately identified, developed, and rewarded.
- The achievement gap is persistent. The gap between economically disadvantaged students and non-economically disadvantaged students is the fundamental issue in virtually every group and subgroup. On this point, Mr. Johnson noted that this report, unlike previous analyses of the performance of low-income students, compares those students with all other students exclusive of students in poverty. Previous comparisons, between low-income students and all students including low income, he continued, masked the true size of the achievement gap.
- A large disparity exists between the most effective and least effective teachers.
- Distribution of the most effective teachers is unfavorable to high-poverty schools. That is, beginning teachers are over-represented in low-performing schools, and, as noted earlier, Level 3 teachers are more likely to receive students at or above proficiency than Level 1 teachers. Mr. Johnson added, however, that this phenomenon is not unique to New Mexico; rather, it is a national trend.

Mr. Johnson then discussed the LFC findings pertaining to the PDD, one of them having to do with the integrity of the process. Although no question on the survey addressed this point, Mr. Johnson noted that one out of every 10 survey respondents volunteered a concern regarding plagiarized or fraudulent PDD submissions. This finding, coupled with the fact that some of those teachers whose PDDs received a passing designation had similar student outcomes as their peers with a failing PDD, suggests a need to examine the PDD process, Mr. Johnson said. He then noted several recommendations related to the PDD for PED to consider:

- require more evidence of student performance in PDD submissions and teacher evaluations;
- require principals to review and authenticate PDD submittals as opposed to the current requirement that they be evaluated by an "administrator"; and
- establish clear guidelines regarding the level of outside assistance teachers can receive when developing their PDDs.

Further LFC recommendations to PED based on the evaluation include:

- develop an incentive program for effective teachers and apply for federal Race to the Top funds to pay for it;

- establish a work group to evaluate establishing clear goals for expected growth on the New Mexico Standards-based Assessment;
- require that the Educational Plan for Student Success compare the economically disadvantaged subgroup to the non-economically disadvantaged subgroup to obtain a more accurate understanding of the magnitude of the achievement gap; and
- allow LESC and LFC access to the Student Teacher Accountability Reporting System (STARS).

Another recommendation was addressed to school districts: that they should direct principals to report on teacher performance and develop action plans to improve the results of the least effective teachers.

Mr. Johnson concluded his presentation by stating that, while the report shows that teachers who have passed their Level 3 PDD achieved the greatest gains and that the three-tiered system has increased teacher pay and helped address recruitment and retention, issues still exist regarding the efficacy of three-tiered licensure. Mr. Johnson noted the need for a constructive conversation about how to measure and reward effective instruction because teacher accountability should be based, at least in part, on student outcomes. He also cited the need for discussions on how to improve teacher evaluations and the PDD process in order to make student outcomes a more integral part of the three-tiered evaluation and licensure system.

PED Response

Offering the PED response, Secretary García first commended the LFC evaluation and emphasized that PED, LFC, and other parties are all working toward the same goal of improving student proficiency. She then called the attention of the committee to a number of items regarding three-tiered licensure and the achievement gap—items that, according to the Secretary, demonstrate that the three-tiered licensure system has met the intent of the Legislature by shifting to a professional educator licensing and salary system, adding that the system was not designed as a teacher growth model.

The Secretary enumerated five points in particular, which she described as milestones, that PED sees as positive outcomes of the three-tiered licensure system:

- for 2008, 94 percent of core classes in New Mexico were taught by highly qualified teachers, an increase over 2003 and 2004 when just 67 percent of core classes were taught by highly qualified teachers;
- New Mexico ranks third in the nation in percentage change in average teachers' salaries from school years 1997-1998 to 2007-2008;
- New Mexico ranks 17th in the nation for its efforts to improve teaching;
- regarding teacher recruitment, there was an increase from 2004 to 2008 in reciprocal licenses issued at Level 1 of 45 percent, Level 2 of 44 percent, and Level 3 of 49 percent. This trend, the Secretary said, indicates that New Mexico is now able to attract more highly qualified individuals, spanning all levels, from out of state; and
- STARS is recognized as a national model for longitudinal data systems.

In response to the LFC findings regarding PDD integrity, the Secretary said that, in some cases, it appears that principals and superintendents are not providing proper oversight. She added that what teachers reported in the surveys regarding PDD plagiarism and fraud are ethics violations and should be handled as such and that PED has established a work group to examine the PDD process.

On the other hand, the Secretary took issue with certain points, among them the methodology and a suggestion surrounding data on the economic status of students. On the first point, the Secretary said that, rather than offering only a “snapshot” of test results for reading and math in grades 4, 5, and 6, a more accurate analysis would have been to measure only the students who remained in the system for three consecutive years; and that the statistical value of scaled scores on the New Mexico Standards-based Assessment decreases as the group size becomes smaller. On the second point, the Secretary objected to the implication that PED had tried to “mask” the true size of the achievement gap in terms of students in poverty.

The Secretary concluded her remarks by re-iterating Mr. Johnson’s suggestion that this evaluation is a good start to a much-needed larger conversation about education in New Mexico.

OEA Response

The Chair then recognized Ms. Beata Thorstensen, Deputy Director, OEA, to respond to the LFC program evaluation. Ms. Thorstensen began by commending Mr. Johnson and the staff who worked on the evaluation, specifically noting Mr. Johnson’s openness to collaboration.

Overall, Ms. Thorstensen said, the OEA believes that the results of the study indicate that the three-tiered licensure system works and that it is important to help more teachers pass their PDDs and obtain a Level 3 license. As indications of the effectiveness of the system, Ms. Thorstensen cited such LFC findings as: Level 3 teachers who completed the PDD had students who made the greatest gains on the New Mexico Standards-based Assessment in reading and math; and teachers completing their Level 3 PDD were the only group whose students improved in proficiency status for both math and reading. However, Ms. Thorstensen continued, the OEA did have some concerns regarding certain LFC interpretations of the results. For example:

- whereas the LFC finds, “Growth in achievement scores can be used to identify effective teachers,” OEA believes a more accurate statement would be: “Growth in achievement scores can be used as one source of information to identify effective teachers if the methodology for using those test scores is clearly understood and proven to be fair, accurate, and reliable”; and
- whereas the LFC states, “There are effective and ineffective teachers at each licensure level despite the pay being similar,” OEA believes that the study’s methodology has the potential of identifying effective and ineffective teachers at each level.

The OEA, Ms. Thorstensen continued, would categorize the LFC program evaluation as a “pilot study” for several reasons, among them:

- the study examined only approximately 10 percent of New Mexico’s teaching work force;

- because of the study's focus on 4th, 5th, and 6th grade teachers, the results cannot be applied to teachers in the early and upper grades or to specialty teachers (OEA suggests further analyses for middle and high school teachers); and
- across the country, there is general agreement that standardized test scores alone do not provide a comprehensive and fair method of how a teacher contributes to student achievement.

Ms. Thorstensen also stated that, while the LFC has raised the issue of developing a pay-for-performance pilot program, multiple agencies should be included in any exploration of such a system in order for districts to be provided with clear and appropriate guidance on targeting under-performing teachers for professional development.

Finally, Ms. Thorstensen noted that the three-tiered system has helped to address the teacher shortage, which was its primary purpose, and that the system has brought national acclaim to New Mexico.

Committee Discussion:

One committee member noted the success of the three-tiered system in alleviating teacher shortages, encouraging more people to enter and remain in teaching as a profession, and generally enhancing the status of the profession. While an examination of the PDD process may be in order, this committee member continued, it has been a good process overall that has lived up to its expectations.

In response to a committee member's question whether LFC evaluators had examined any actual PDDs, Mr. Sallee said that they had not largely because PED considers them confidential documents. Evaluators did see examples, however; and Secretary García said that PED had provided samples with the names redacted.

In response to a committee member's question whether it was advisable to make recommendations based on a single year of New Mexico Standards-based Assessment data, Mr. Sallee explained that the large data set allowed "significant conclusions." He added that the evaluation controlled for poverty and focused on self-contained classrooms with little student movement between teachers.

In response to a committee member's question about the effects of poverty on student achievement, Mr. Johnson said that poverty is a significant factor in the achievement gap but that research shows that effective instruction can overcome poverty. Mr. Sallee added the possibility that teachers who consistently show good results, especially with students in poverty, should be compensated at greater levels than those who do not.

Finally, among other points, the discussion addressed:

- the importance of assigning Level 3 teachers to the lowest-achieving students and the difficulty of doing so in small rural districts;
- the possibility that financial incentives will not necessarily make teachers more effective or encourage them to relocate to high-need areas; and

- the positive effect on student achievement of the personal qualities that teachers possess, like enthusiasm for the subject and energy for teaching.

SUPERINTENDENTS AND COMMUNITY INPUT

Area Superintendents

Superintendents Mike Phipps of Artesia Public Schools and Rick Ferguson of Jal Public Schools expressed concerns regarding the timely reimbursement of the *American Recovery and Reinvestment Act* (ARRA), Title I, and the *Individuals with Disabilities Education Improvement Act*, Part B (IDEA-B) funds to school districts by the Public Education Department (PED).

Superintendent Ferguson also requested that the committee examine the school calendar issue and consider changing the requirement to 1,088 hours per school year instead of 180 days per school year. Mr. Ferguson stated that such a change would allow school districts to lengthen the school day rather than adding days, which would force them to extend teacher contracts and incur additional expenses.

Mr. Travis Glenn, School Board President, Tatum Municipal Schools, expressed concern regarding the time students are required to spend out of the classroom in preparation for short-cycle assessment tests. Mr. Glenn also noted his belief that the short-cycle assessments do not correlate with other required tests.

Mr. Tom Sullivan, Director of the New Mexico School Superintendents Association, expressed his concern to the committee about the burden on school districts and superintendents to be accountable to many different state agencies, all of which visit and contact schools for interviews, surveys, and audits. Mr. Sullivan asked the committee to consider options to relieve some of this burden, including forming "audit teams" (consisting of one member each from the Office of Education Accountability, the LESC, PED, and the Legislative Finance Committee) and asking the Legislature to clarify reporting requirements.

Mr. Sullivan said that the requests school districts receive are not only from state agencies, but that they also include requests under the *Freedom of Information Act*. One example was a request from the Rio Grande Foundation to school districts for nearly all financial information, including payroll and vendor details. Superintendent Phipps noted that, for his district, this request amounted to thousands of pages of information that had to be redacted to exclude information such as Social Security numbers, creating a burden on the district.

Sanctions for Success

Mr. David García, Director of "Sanctions for Success," described the teen court program in Hobbs Municipal Schools in which misdemeanor offenders and students who are performing poorly in school receive peer tutoring and participate in a rigorous, four-week academic remediation in lieu of probation or incarceration, provided they comply with the program requirements.

Several committee members expressed their wishes to see the program mirrored in other parts of the state, citing the success of this and other similar programs with respect to student achievement. Committee members also expressed pleasure regarding the cost-saving nature of the program, noting that incarceration is far more expensive to the state.

There being no other business, Senator Nava, with the consensus of the committee, recessed the LESC meeting at 5:20 p.m.

**MINUTES
LESC MEETING
Wednesday, August 19, 1009**

Senator Cynthia Nava, Chair, called the LESC meeting to order Wednesday, August 19, 2009, at 9:10 a.m. in the Multi-purpose Room of the Bob Moran Building, New Mexico Junior College, Hobbs, New Mexico.

The following LESC members were present:

Senators Cynthia Nava, Chair, Mary Jane M. García, Gay G. Kernan, and Lynda M. Lovejoy; and Representatives Rick Miera, Vice Chair, Jimmie C. Hall, Dennis J. Roch, and Jack E. Thomas.

The following LESC advisory members were present:

Senators Vernon D. Asbill and Sander Rue; and Representatives Nathan P. Cote, Nora Espinoza, Mary Helen Garcia, Karen E. Giannini, John A. Heaton, and Shirley A. Tyler.

IMPLEMENTATION OF ASSESSMENT REQUIREMENTS IN LAW

Senator Nava recognized Ms. Pamela Herman, LESC staff, for a presentation on the status of implementation of academic assessment requirements in law. Ms. Herman told the committee that the presentation would focus on two issues: (1) the selection of a new testing company for New Mexico; and (2) the alignment of short-cycle assessments with New Mexico content standards. Ms. Herman noted that Dr. Catherine Cross Maple, Deputy Secretary for Learning and Accountability, and Dr. Tom Dauphinee, Interim Supervisor, Assessment and Accountability Division, both from the Public Education Department (PED), were in the audience to respond to questions; and she introduced Dr. Stanley Rabinowitz, Senior Program Director, Assessment and Standards Development Services at WestEd, to explain the short-cycle assessment study.

Selection of a New Testing Company for New Mexico

Ms. Herman explained that the state's contract with its previous assessment vendor, Pearson, had expired at the end of FY 09 and that during FY 09, the department released four requests for proposals (RFPs) for new four-year assessment contracts pursuant to the state *Procurement Code*. These included RFPs for:

- standards-based assessments required for students in grades 3-8 and 11 for school accountability purposes under the state *Assessment and Accountability Act* and the federal *No Child Left Behind Act of 2001* (NCLB), as well as the previous and new high school graduation assessments (discussed below);
- the New Mexico English Language Placement Test and English Language Proficiency Assessment, required under NCLB; and
- the College Readiness Assessment and the Workforce Readiness Assessment, required pursuant to 2007 and 2008 state high school redesign legislation.

Ms. Herman provided a summary, from the staff report, of the provisions of state and federal law mandating each assessment, a very general scope of the work included in each RFP, and the number of assessments in each category administered in school year 2008-2009.

Ms. Herman explained that the costs associated with assessments are both nonrecurring and recurring. Nonrecurring costs, which PED generally pays, include initial test development and periodic updating of assessments. Recurring costs include school district administrative costs such as printing, distribution, scoring, and reporting. She stated that, from 1999 to 2009, the Legislature had appropriated approximately \$23.2 million to PED to develop assessments mandated by state statute and by the federal NCLB. In addition, in the same period, the Legislature had appropriated a total of approximately \$8.9 million in recurring dollars in the public school funding formula to provide for school district administrative costs for assessments.

Ms. Herman told the committee that, although the staff report contained a summary of estimated assessment costs provided to the LESC staff by PED, the department had revised those estimates and had provided committee members with a spreadsheet detailing the new estimates. Senator Nava recognized Dr. Cross Maple and Dr. Dauphinee to explain the new cost estimates.

Dr. Dauphinee explained that, because all of the new contracts were still being negotiated and were not finally approved pursuant to the state *Procurement Code*, he could not disclose which of the two offerors for each RFP had made the low bid. However, he said that negotiations had reached the point where PED was reasonably confident of what the final costs would be both to the department and to districts.

Dr. Dauphinee said that, based on the best information currently available, PED anticipated that:

- the department's total funding need for assessments for FY 10 would be \$8.8 million; and that it had approximately \$12.4 million on hand to pay for the development of assessments from all sources, state and federal, leaving approximately \$3.6 million unbudgeted for assessments for FY 10; however,
- school districts' total funding need for assessments for FY 10 would be approximately \$12.3 million; but only \$8.9 million in recurring funds had been appropriated to the state equalization guarantee to cover those costs, leaving districts with a shortfall of approximately \$3.4 million in assessment costs for FY 10.

Ms. Ramírez-Maestas explained that the *General Appropriation Act of 2009* made a special appropriation of \$3.0 million to PED to pay for assessment and test development from instructional material cash balances, "notwithstanding any restriction on the Instructional Material Fund." However, because statute specifies the uses for instructional material cash

balances, PED did not make the transfer; therefore, the \$3.6 million unbudgeted balance for assessments at PED probably did not reflect the actual funds available at the department.

Dr. Dauphinee noted that the new contracts for standards-based assessments would provide for a change from 70 percent multiple choice items and 30 percent constructed response to 80 percent multiple choice and 20 percent constructed response. He stated that he did not know, at the time, if school districts would receive test results sooner as a result.

Committee Discussion:

In response to a question from a committee member how school districts would be able to make up the estimated shortfall of \$3.4 million for assessment costs for FY 10, Dr. Cross Maple stated that, because some of the assessments were required by federal law, districts could use some of their allocations of Title I and *Individuals with Disabilities Education Improvement Act* (IDEA) funds from the *American Recovery and Reinvestment Act of 2009* (ARRA) federal stimulus package.

Alignment of Short-cycle Assessments with New Mexico Content Standards

Ms. Herman stated that in 2007, LESC-endorsed legislation was enacted to require PED to establish a system of assessments to determine the readiness of high school students for college and the workplace. The statute requires that the assessments be aligned with state academic content and performance standards, college placement tests, and entry-level career skill requirements. In 9th and 10th grades, the college and workplace readiness assessments consist of short-cycle assessments administered three times annually. Ms. Herman told the committee that, in 2009, PED commissioned a study by WestEd to determine how well the short-cycle assessments most commonly used in New Mexico school districts were aligned with state standards.

Senator Nava recognized Dr. Rabinowitz to explain the methodology, findings, and recommendations of the studies. Dr. Rabinowitz explained that short-cycle assessments are considered a class of formative assessments and that alignment with state standards is critical if valid inferences are to be made from them about students' mastery of standards and preparation for accountability assessments. New Mexico, he added, was one of the first states to require short-cycle assessments. Dr. Rabinowitz said that the study included Riverside Assess2Learn, Northwest Evaluation Association Measures of Academic Progress (MAPS), Pearson Learning, Scholastic, Discovery, and ACT COMPASS; and that the study looked at their alignment with the New Mexico standards-based assessment blueprint for reading and mathematics in 9th and 11th grades.

Dr. Rabinowitz explained that the purpose of the study was not to identify the best test, which would require a review of many other features, but only to evaluate alignment, which was a minimum criterion for assessment quality. He said that the study sought to answer two key questions:

- to what degree does *each test item* align for content and depth to the state test blueprints?; and
- to what degree do the *assessments as a whole* represent the breadth and range of knowledge of the blueprints?

For each assessment, Dr. Rabinowitz presented data showing the percentage of items aligned to at least one state benchmark; the depth of knowledge tested by the aligned items; and “balance of representation,” that is, how well the aligned items on each assessment mirrored the distribution of content standards in the state blueprint.³ He provided detailed findings in a handout in committee members’ notebooks, and he reviewed the degree to which each assessment aligned or did not align with state standards and benchmarks. Dr. Rabinowitz said, in summary, that the study showed “perhaps a surprising degree of non-alignment” of the short-cycle assessments—certainly less alignment than of the standards-based assessment—with state standards.

In light of the findings of disparities among the assessments and between assessments and state standards and benchmarks, Dr. Rabinowitz offered the following recommendations to PED and the committee:

- review the intended purpose of the assessments to determine whether they adequately meet New Mexico’s needs as short-cycle diagnostic assessments;
- review alignment of the state standards-based assessment system to ensure the 11th grade standards-based assessment is aligned with 11th grade standards and with standards and assessments at lower grade levels;
- analyze academic performance data at school, district, and state levels vis-à-vis the study findings to determine which short-cycle assessments are most valid;
- encourage professional development at the teacher, school, and district level in the implementation of the short-cycle assessments to derive the greatest possible benefit and impact; and
- Seek “impact” data from test publishers and school districts to continually evaluate and monitor whether short-cycle assessments improve student achievement and ensure progress toward proficiency.

Committee Discussion:

In response to a question from a committee member regarding how much guidance PED had provided and would provide to school districts about the selection of short-cycle assessments, Dr. Cross Maple stated that PED had at first allowed districts to continue using the assessments of their choice, but the department hoped to be able to provide more guidance to districts by the end of August 2009, based on the WestEd study and other input.

In response to a question from a committee member regarding the tradeoff between time spent on assessment and ability to assess thinking skills, Dr. Rabinowitz explained that there was a question whether short-cycle assessments were really the best mechanism to test problem-

³ For example, for language arts, what percentage of possible points on an assessment can be earned for comprehension, compared to the percentage of state blueprint standards that address comprehension? And for mathematics, what percentage of possible points can be earned for algebra, functions and graphs; geometry and trigonometry; or data analysis and probability, compared to state standards?

solving and extended thinking; however, that does not mean short-cycle assessments have no role to play.

In response to a concern expressed by a committee member about the lack of alignment between short-cycle assessments and standards, Dr. Rabinowitz stated that the question was, “What is the purpose of these assessments?” He stated that they would certainly be inappropriate for accountability purposes, but that for progress-monitoring, predictive ability was a factor in evaluating their usefulness; and he suggested that vendors should be asked to show correlations between performance on their tests and on state standards-based assessments. Dr. Rabinowitz noted that, in a neighboring state, WestEd had just concluded a similar alignment study with similar findings. He said that pressure from states, along with the development of common core standards, should have a salutary effect on the quality of tests marketed by national vendors.

In response to a question from a committee member whether the state should be using the ACT or the National Assessment of Educational Progress (NAEP) exam as its standard, there were several responses. Senator Nava observed that, because of design and sample size, NAEP could not provide comparison data among schools or districts. Dr. Cross Maple noted that two years’ worth of preliminary data from the Office of Education Accountability *Ready for College* report showed a high level of correlation between proficiency on the 11th grade standards-based assessment and ability to place into credit-bearing courses in college. Dr. Rabinowitz said that, in his view, there was a greater consensus nationally than at any time in the past about the need for common standards. He pointed to a recent decision of the National Assessment Governing Board to commission a study of the alignment of the 11th grade NAEP assessment with the ACT and the SAT, as well as the US Department of Education announcement of its intention to allocate \$350 million for multi-state development of national standards-based assessments.

In response to a question from a committee member regarding the Achieve multi-state Algebra II exam, Dr. Rabinowitz stated that there had been a mixed reaction to the quality of the exam. He stated further that there was a whole new debate about the common core and college readiness and the virtue of Algebra II as a gate-keeper course, and that there might be some revision to that thinking over the next few years.

In response to a question from a committee member regarding how many states had constructed-response items on their standards-based assessments, Dr. Rabinowitz said that most states had open-ended questions, and that the turnaround time to grade those questions had grown shorter and would likely grow shorter still thanks to artificial intelligence applications in development to grade constructed responses. He said it would be an unfortunate development to trade constructed response on assessments just to achieve speed in grading.

Senator Nava observed that nothing could substitute for good professional development for teachers in how to use assessment as a routine part of classroom instruction in order to improve student achievement. Continuing that point, Dr. Rabinowitz noted that in his experience perhaps the process around assessments and an emphasis on results, rather than the assessments themselves, were the reasons that school districts valued the tests so much. He said that no school should be surprised by the results of the standards-based assessments at the end of the year; and that the irony of testing is that only a really good teacher could use the results of tests appropriately, but that when you have a really good teacher, you might not need the tests.

Senator Nava requested that a representative from Gadsden Independent Schools and a representative from Hobbs Municipal Schools be included in the PED work group studying options for short-cycle assessments.

Representative John A. Heaton requested a copy of the data showing the correlation of need for remediation in college and performance on the standards-based assessments.

ADJOURNMENT

There being no further business, with the consensus of the committee, Senator Nava adjourned the LESC meeting at 11:53 a.m.

C. Nava Chairperson

12-14-2009 Date